

1 BRANCART & BRANCART
2 Christopher Brancart (SBN 128475)
Elizabeth Brancart (SBN 122092)
Post Office Box 686
3 Pescadero, CA 94060
Tel: (650) 879-0141
4 Fax: (650) 879-1103
cbrancart@brancart.com
ebrancart@brancart.com

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6 Attorneys for Plaintiffs
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9 **UNITED STATES DISTRICT COURT**
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11 **NORTHERN DISTRICT OF CALIFORNIA**

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13 **EDITH MACIAS, individually and on
behalf of similarly situated
individuals; HOTON DURAN;
TIFFANY HUYNH; AURA MENDIETA;
WILLIAM LABOY; MIGUEL ACOSTA;
CRUZ ACOSTA; CUAUHTEMOC
TORAL; and TERESA VILLEGAS,**

14
15 **Case No. C07-3437 JSW**

16
17 **JOINT APPLICATION AND STIPULATION
FOR ISSUANCE OF ORDER STAYING
PROCEEDINGS PENDING MEDIATION;
[PROPOSED] ORDER**

18
19 **Plaintiffs,**

20
21 **vs.**

22
23 **THOMAS J. TOMANEK; and
MARK GARIBALDI, individually
and doing business as THE
GARIBALDI COMPANY,**

24
25 **Defendants.**

26
27 The parties to this action, by and through their attorneys of record, hereby apply
28 for and stipulate to issuance of an order staying the briefing on defendants' pending
objections to the report and recommendation of the magistrate judge to enable the
parties to attempt to mediate a resolution to this case, the related Ninth Circuit appeal
and a related state action. There is good cause to grant the request based on the
following:

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30 1. On January 8, 2008, this Court granted defendants' motion pursuant to Fed.
R. Civ. P. 12(b)(6) and 12(b)(1) and dismissed plaintiffs' RICO claims with prejudice

1 and their related state claims for lack of subject-matter jurisdiction. (Docs. 35, 36.)
2 Thereafter, defendants moved to be declared the prevailing parties under California law
3 based on a contractual attorneys' fees provision, seeking an award of attorneys' fees
4 and costs. (Docs. 37-42, 54-57.) This Court referred the matter to Magistrate Judge
5 Laporte for a report and recommendation. (Doc. 43.)

6 2. On January 17, 2008, plaintiffs filed a case in Alameda Superior Court, case
7 number HG08366602, alleging the same claims except for the RICO, negligence and
8 breach of covenant of good faith and fair dealing claims.

9 3. On February 1, 2008, plaintiffs appealed this Court's dismissal of their RICO
10 claims to the Ninth Circuit, case number 08-50261.

11 4. On March 11, 2008, Magistrate Judge Laporte issued a Report and
12 Recommendation to Deny Defendants' Motion to be Declared Prevailing Parties and for
13 an Award of Attorneys' Fees. (Doc. 62.)

14 5. On March 25, 2008, defendants filed objections to Magistrate Judge Laporte's
15 report and recommendation and moved for de novo determination of their motion
16 pursuant to Fed. R. Civ. P. 72(b). (Docs. 63, 64, 65, 66.) Plaintiffs' response to those
17 objections is due on April 11, 2008.

18 6. On April 3, 2008, in a conference with a Ninth Circuit mediator, the parties
19 agreed to stay the Ninth Circuit appeal and the state action while they attempted to
20 mediate the entire dispute. After an informal exchange of information, the parties will
21 attend a mediation before Charles Dyer in Menlo Park on a date in early June (the
22 parties are currently in the process of picking that date).

23 7. The state case is set for a complex case management conference on April
24 21, 2008. At that time, the parties will ask Judge Bonnie Sabraw to stay the action until
25 after the attempted mediation.

26 Accordingly, the parties seek an order staying the briefing on defendants'
27 objections to the magistrate judge's report and recommendation while they attempt
28 mediation. If the mediation is unsuccessful, the parties agree to file a joint notice to that

1 effect with this Court and agree that plaintiffs' response to defendants' objections will be
2 due within 10 days of the filing of that notice.

3 SO STIPULATED.

4 Respectfully submitted,
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6 Dated: April 7, 2008

7 /s/
8 Elizabeth Brancart
9 Attorneys for Plaintiffs¹

10 ALLMAN & NIELSEN, P.C.

11 Dated: April 7, 2008

12 /s/
13 Sara B. Allman
14 Attorneys for Defendant
15 Thomas J. Tomanek

16 FARBSSTEIN & BLACKMAN

17 Dated: April 7, 2008

18 /s/
19 John S. Blackman
20 Attorneys for Defendant
21 Mark Garibaldi

22 WENDEL ROSEN BLACK & DEAN, LLP

23 Dated: April 7, 2008

24 /s/
25 Carl D. Ciochon
26 Attorneys for Defendant
27 Mark Garibaldi

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¹As the e-filer, I attest that each of the other signatories hereto have concurred in
the filing of this document.